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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,880	08/17/2005	Matthias Dammers	3988-045910	7396
28289 7590 06/09/2009 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				
EXAMINER				
ELOSHWAY, NIKI MARINA				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
06/09/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/519,880

**Applicant(s)**

DAMMERS, MATTHIAS

**Examiner**

NIKI M. ELOSHWAY

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 April 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-50 is/are pending in the application.  
4a) Of the above claim(s) 36-45 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 25-35, 46-50 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Election/Restrictions*

2. Claims 36-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 22, 2009.
3. Applicant's election without traverse of Group I, claims 25-35 and 46-50 in the reply filed on April 22, 2009 is acknowledged.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 25, 26, 28, 34, 35 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon et al. (U.S. 5,156,295). Gordon et al. teach a cap, shown in figures 4 and 5, for a laminated carton packaging, shown in figure 8, wherein the cap is constructed of plastic, as disclosed in col. 3 lines 22-26. A spout element 64 having a screw thread 74 and a spout opening designed to be closed by a screw cap 78. Regarding the limitation that the spout element is deep drawn, it has been held that "even though product-by-process claims are limited by and defined by the process, determination of patentability is

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based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Kennedy (U.S. 4,643,330). Gordon et al. disclose the claimed invention except for the threads being interrupted. Kennedy teaches that it is known to provide a spout with interrupted threads (see element 32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap assembly of Gordon et al. with the threads being interrupted, as taught by Kennedy, in order to allow for drainage of moisture from the area between the spout and cap, as disclosed in Kennedy.

8. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of DE3832412. Gordon et al. disclose the claimed invention except for the plastic being a multilayer foil. DE3832412 teaches that it is known to provide a spout made of multilayer foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap assembly of Gordon et al. with the material being a multilayer foil, as taught by DE3832412, in order to provide the spout with gas barrier layers.

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9. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Hargraves et al. (U.S. 4,966,780). Gordon et al. disclose the claimed invention except for the angled edge, outward pitch and downward tapering periphery. Hargraves et al. teach that it is known to provide a cap with an angled edge, outward pitch and downward tapering periphery (see figure 1A). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap assembly of Gordon et al. with the cap having an angled edge, an outward pitch and downward tapering periphery, as taught by Hargraves et al., in order to allow the cap to be used as a measuring cup.

10. Claims 47, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Bouraoui et al. (U.S. 5,848,748). Gordon et al. disclose the claimed invention except for the plastic and aluminum layers of the packaging body. Bouraoui et al. teach that it is known to provide a packaging body with a carton/plastic/aluminum laminate (see col. 4 line 61 through col. 5 line 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the package assembly of Gordon et al. with the packaging body being made of a carton/plastic/aluminum laminate, as taught by Bouraoui et al., in order to construct a package which has a moisture barrier and gas barrier.

11. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Bouraoui et al. (U.S. 5,848,748) and DE 3308112. Gordon et al. disclose the claimed invention except for the plastic and aluminum layers of the packaging body and the plastic bottom. Bouraoui et al. teach that it is known to provide a packaging body with a carton/plastic/aluminum laminate (see col. 4 line 61 through col. 5 line 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the package assembly of Gordon et al. with the packaging body being made of a carton/plastic/aluminum laminate, as taught by Bouraoui et al., in order to construct a package which has a moisture barrier and gas barrier.

DE 3308112 teaches that it is known to provide a packaging body with a plastic bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified package assembly of Gordon et al. with a plastic bottom, as taught by DE 3308112, in order to increase the strength of the bottom.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the spout structure.

13. THIS ACTION IS NON-FINAL.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/  
Niki M. Eloshway

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Examiner

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